

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Julienne Wyckoff and Carolyn Laine,  
Complainants,  
vs.

FINDINGS OF FACT,  
CONCLUSIONS, ORDER  
AND MEMORANDUM

Gary Peterson and Robert Williams,  
Respondents.

The above-entitled matter came on for hearing on April 7, 2005, before a panel of three Administrative Law Judges: Richard C. Luis (Presiding Judge), Bruce H. Johnson, and George A. Beck. The hearing record closed on April 12, 2005, with the filing of post-hearing memoranda.

Jay Benanav, Attorney at Law, Weinblatt & Gaylord, PLC, Suite 300 Kellogg Square, 111 East Kellogg Boulevard, St. Paul, Minnesota 55101, appeared on behalf of the Complainants, Julienne Wyckoff and Carolyn Laine. James S. Dahlquist, Attorney at Law, 270 Grain Exchange North, 301 South Fourth Avenue, Minneapolis, MN 55415, appeared on behalf of the Respondents, Gary Peterson and Robert "Bobby" Williams.

**NOTICE**

This is the final decision in this case, as provided for by Minn. Stat. § 211B.36, subd. 5. A party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

**STATEMENT OF ISSUES**

1. Did Respondent Peterson violate Minn. Stat. § 211B.06, by preparing and disseminating campaign material that contained false statements that Respondent Peterson knew were false or that he communicated with reckless disregard of whether they were false?

2. Did Respondent Williams violate Minn. Stat. § 211B.13 by arranging for the donation of chicken dinners and soft drinks to the residents of a Columbia Heights high-rise on October 30, 2004?

3. Was Respondent Williams' promise to arrange for the delivery of the chicken dinners permitted under Minn. Stat. § 211B.12?

4. Did both Respondents violate Minn. Stat. § 211A.02, by failing to report payments in a timely manner they made to Bruce Nedegaard's corporations for placing their campaign signs on corporate property?

5. If any campaign violations occurred in connection with the situations noted above, what remedies, if any, are appropriate?

Based on the record in this matter, and for the reasons set out in the attached Memorandum, the panel makes the following:

### **FINDINGS OF FACT**

1. The City of Columbia Heights is governed by a five-member Council, consisting of a mayor and four council members. The mayor serves a two-year term and the council members serve staggered four-year terms.<sup>[1]</sup>

2. Complainant Julianne Wyckoff was elected to the Columbia Heights City Council in November of 1998. She served on the City Council from 1999 – 2002. In November of 2002, Complainant Wyckoff ran for Mayor of Columbia Heights and won.<sup>[2]</sup>

3. Respondent Gary Peterson was first elected to the Columbia Heights City Council in 1984.<sup>[3]</sup> Peterson served 14 years on the council and two terms as mayor (1999-2002).<sup>[4]</sup> During Peterson's two terms as mayor, Ms. Wyckoff sat next to him on the Council.<sup>[5]</sup>

4. In November of 2004, Complainant Wyckoff ran for re-election as mayor of Columbia Heights against Respondent Gary Peterson. Ms. Wyckoff lost to Mr. Peterson by 501 votes (4,819 – 4,318).

5. In addition to the mayoral race, there were two open seats on the Columbia Heights City Council. Complainant Carolyn Laine was a candidate for City Council and Respondent Robert Williams ran for re-election to the Council. Mr. Williams was re-elected. Ms. Laine came in third place, losing the election by 217 votes (4,077 – 3,860).

6. On January 20, 2005, the Complainants filed a complaint with the Office of Administrative Hearings alleging that: (1) campaign material prepared and distributed by Respondent Peterson contained a false statement; (2) Respondent Williams made an illegal campaign expenditure that violated the prohibition against bribery when he donated 30 chicken dinners and 24 cans of soda to the residents of a senior high rise located in Columbia Heights; and (3) both Respondents failed to report expenditures they made to a local developer to place their campaign signs on his property.

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#### **False campaign material**

7. In a campaign letter dated October 26, 2004, and sent by U.S. mail to the residents of Columbia Heights, Gary Peterson made the following statement:

While my opponent was living out of state during my previous tenure of 14 years as a council member and two terms as Mayor of Columbia Heights, we did not stand still.

8. Mr. Peterson wrote the letter himself and had some friends review it before he distributed it.<sup>[6]</sup>

9. Julienne Wyckoff and her mother, Dorothy Wyckoff, received Peterson's letter in the mail on Friday, October 29, 2004.<sup>[7]</sup>

10. Complainant Wyckoff grew up in Columbia Heights. For a period of seven years, Ms. Wyckoff lived in New York City. Ms. Wyckoff moved back to Columbia Heights after her father died in January of 1993. Since January of 1993, she has lived with her mother in her mother's Columbia Heights home.<sup>[8]</sup>

11. On November 11, 2004, Columbia Heights' weekly community newspaper, the *Sun Focus*, ran a letter to the editor written by Dorothy Wyckoff. The letter was entitled: "Defending my daughter." In it, Dorothy Wyckoff noted what she considered to be "distorted facts" contained in Gary Peterson's campaign letter. Specifically, Mrs. Wyckoff complained that Peterson implied that her daughter had lived out of state "for the entire time of his 14 years on the council and four years he was Mayor." Mrs. Wyckoff pointed out that her daughter sat next to Peterson on the Council for the two terms he was Mayor.<sup>[9]</sup>

12. Dorothy Wyckoff wrote the letter to the editor after she received Peterson's campaign letter on October 29, 2004. Julienne Wyckoff made approximately 250 copies of her mother's letter to the editor and hand delivered approximately 175 copies to homes within Columbia Heights prior to the election.<sup>[10]</sup> The City has approximately 8,000 households.<sup>[11]</sup>

### **Donated Chicken Dinners**

13. Park Villa is a subsidized apartment complex for seniors and disabled persons located in Columbia Heights, Minnesota. Park Villa has approximately 145 units and 150 residents. For the past three or four years, Park Villa has had a standing informal Saturday night potluck dinner for its residents.<sup>[12]</sup>

14. Dennis Ecklund is the president of the Park Villa residents' council. Sometime in October of 2004, Mr. Ecklund called the candidates running for mayor and city council in Columbia Heights to come to Park Villa and meet the residents. Mr. Ecklund viewed this as an opportunity for the residents to get to know the candidates.<sup>[13]</sup>

15. Respondents Peterson and Williams visited Park Villa on Friday, October 29, 2004, as part of their campaigns. They spoke to the residents, indicated that they were candidates in the up-coming election, and described their backgrounds.<sup>[14]</sup>

16. In addition to being a candidate for City Council, Mr. Williams is a partner in "Jeff's Bobby and Steve's Auto World" located in Columbia Heights. This business consists of a gas station, convenience store, car wash, restaurant, towing service, and small engine repair. Jeff Bahe is a partner and the day-to-day operations manager of Jeff's Bobby and Steve's Auto World. In addition to its day-to-day service and retail

operations, Jeff's Bobby and Steve's Auto World raises and donates money to a number of local charitable organizations. Auto World has also held spaghetti dinner fundraisers to raise money for Columbia Heights' sister city, Lomianki, Poland.<sup>[15]</sup>

17. After Peterson and Williams finished addressing the residents at Park Villa, Respondent Williams asked Ecklund if Park Villa still had a potluck dinner and church service on Saturday nights. Ecklund responded that they did, and Williams stated that he would have 30 pieces of chicken and soft drinks brought over the next night from his restaurant at Jeff's Bobby and Steve's Auto World.<sup>[16]</sup>

18. On October 30, 2004, Jeff's Bobby and Steve's Auto World donated 30 pieces of chicken and two 12-packs of soft drinks to Park Villa for the residents' potluck. About 25-30 people attended the potluck. This was the first time Auto World had donated food to Park Villa.<sup>[17]</sup> However, Park Villa residents frequently ordered food to be delivered from Auto World, and take-out menus from Auto World could be found in Park Villa's lobby.<sup>[18]</sup>

19. The total retail cost for one breast of chicken and one can of pop is \$2.65 at Jeff's Bobby and Steve's Auto World.<sup>[19]</sup> The retail cost of a can of soft drink is 50 cents. The total value of the food and beverages delivered to Park Villa on October 30, 2004, was approximately \$76.50.<sup>[20]</sup>

20. In February of 2005, Williams called Ecklund and said that he wanted to donate chicken and soft drinks to Park Villa.<sup>[21]</sup> Sometime in mid-February of 2005, Williams directed Jeff Bahe to have Auto World deliver 20 pieces of chicken and two 12-packs of soft drinks to Park Villa.<sup>[22]</sup>

21. Auto World made another delivery of chicken and soft drinks to Park Villa in March of 2005.<sup>[23]</sup>

## **Financial Reporting**

22. On or about October 4, 2004, Respondents Peterson and Williams approached Bruce Nedegaard and asked him if they could place campaign lawn signs on the boulevard in front of two pieces of commercial property owned by corporations Nedegaard controls. Mr. Nedegaard is a general contractor and developer who has appeared before the Columbia Heights City Council in the past on matters relating to development projects within the city.<sup>[24]</sup>

23. Mr. Nedegaard agreed to allow the Respondents to place their campaign lawn signs on the properties. Both Respondents insisted on paying Nedegaard's corporations \$25 for each sign they posted. Peterson posted one sign and Williams posted two signs. The Respondents were concerned that if Nedegaard allowed them to post their signs for free, they might be found in violation of campaign laws regulating corporate contributions.<sup>[25]</sup>

24. Neither Peterson nor Williams disclosed the payments to Nedegaard's corporations on their financial reporting forms.<sup>[26]</sup>

25. After Peterson and Williams received a copy of the complaint filed in this matter, they filed amended financial reports disclosing the payments to Nedegaard's corporations.<sup>[27]</sup>

Based upon the foregoing Findings of Fact, the panel makes the following:

## **CONCLUSIONS**

1. Minn. Stat. § 211B.35 authorizes the panel of Administrative Law Judges to consider this matter.

2. Minn. Stat. § 211B.01, subd. 2, amended in 2004, defines "campaign material" to mean "any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election, ..." Respondent Peterson's letter dated October 26, 2004, is campaign material within the meaning of that statute.

3. Minn. Stat. § 211B.06, subd. 1, provides, in part: "A person is guilty of a gross misdemeanor who intentionally participates in the preparation, dissemination ... of ... campaign material with respect to the personal or political character or acts of a candidate ... that is designed or tends to elect, injure, promote, or defeat a candidate for nomination or election to a public office ..., that is false, and that the person knows is false or communicates to others with reckless disregard of whether it is false."

4. The burden of proving the allegations in the complaint is on the Complainants. The standard of proof of a violation of Minn. Stat. § 211B.06, relating to false campaign material, is clear and convincing evidence.<sup>[28]</sup> The standard of proof of any other violation of chapter 211A or 211B is a preponderance of the evidence.<sup>[29]</sup>

5. The Complainants have failed to show by clear and convincing evidence that Respondent Peterson violated Minn. Stat. § 211B.06, subd. 1, by preparing and disseminating campaign material that contained false statements that Respondent knew were false or communicated to others with reckless disregard of whether they were false.

6. Minn. Stat. § 211B.13, subd. 1, provides as follows:

A person who willfully, directly or indirectly, advances, pays, gives, promises, or lends any money, food, liquor, clothing, entertainment, or other thing of monetary value, or who offers, promises, or endeavors to obtain any money, position, appointment, employment, or other valuable consideration, to or for a person, in order to induce a voter to refrain from voting, or to vote in a particular way, at an election, is guilty of a felony. This section does not prevent a candidate from stating publicly preference for or support of another candidate to be voted for at the same primary or election. Refreshments of food or nonalcoholic beverages of nominal value consumed on the premises at a private gathering or public meeting are not prohibited under this section.

7. The Complainants have shown by a preponderance of the evidence that Respondent Williams violated Minn. Stat. § 211B.13 by arranging for chicken dinners and soft drinks to be donated to the residents of Park Villa on October 30, 2004.

8. Minn. Stat. § 211B.12 governs legal expenditures and provides as follows:

Use of money collected for political purposes is prohibited unless the use is reasonably related to the conduct of election campaigns, or is a noncampaign disbursement as defined in section 10A.01, subdivision 26. The following are permitted expenditures when made for political purposes:

- (1) salaries, wages, and fees;
- (2) communications, mailing, transportation, and travel;
- (3) campaign advertising;
- (4) printing;
- (5) office and other space and necessary equipment, furnishings, and incidental supplies;
- (6) charitable contributions of not more than \$50 to any charity annually; and
- (7) other expenses, not included in clauses (1) to (6), that are reasonably related to the conduct of election campaigns. In addition, expenditures made for the purpose of providing information to constituents, whether or not related to the conduct of an election, are permitted expenses. Money collected for political purposes and assets of a political committee or political fund may not be converted to personal use.

9. The Complainants failed to show by a preponderance of the evidence that Respondent Williams used money collected for political purposes when he arranged for the donation of chicken dinners in violation of Minn. Stat. § 211A.12.

10. Minn. Stat. § 211A.02, subd. 1, requires candidates who make distributions of more than \$750 in a calendar year to submit an initial report to the filing officer within 14 days after making the disbursements of more than \$750, and to continue filing reports as listed in paragraph (b), including a report 30 days after the general election.

11. The Complainants have shown by a preponderance of the evidence that Respondents Williams and Peterson violated Minn. Stat. § 211A.02, by failing to timely report payments they made to Bruce Nedergaard's corporations for placing their campaign lawn signs on corporate property.

12. These Conclusions are reached for the reasons discussed in the Memorandum below, which is incorporated into these Conclusions by reference.

Based upon the record herein, and for the reasons stated in the following Memorandum, the panel of Administrative Law Judges makes the following:

### **ORDER**

#### **IT IS ORDERED:**

1. That Respondent Peterson pay a civil penalty of \$100 by May 27, 2005, for violating Minn. Stat. § 211A.02.<sup>[30]</sup>
2. That Respondent Williams pay a civil penalty of \$100 by May 27, 2005 for violating Minn. Stat. § 211A.02.
3. That Respondent Williams pay a civil penalty of \$1,500 by May 27, 2005, for violating Minn. Stat. § 211B.13.

Dated this 25<sup>th</sup> day of April 2005.

/s/ Richard C. Luis

RICHARD C. LUIS

Presiding Administrative Law Judge

Bruce H. Johnson

BRUCE H. JOHNSON

Administrative Law Judge

George A. Beck

GEORGE BECK

Administrative Law Judge

### **MEMORANDUM**

The Complaints allege the following three campaign violations: (1) that Respondent Peterson prepared and distributed campaign material that contained a false statement; (2) that Respondent Williams made an illegal campaign expenditure that violated the prohibition against bribery when he arranged for the donation of 30 chicken dinners and 24 cans of soft drinks to the residents of a senior high rise in Columbia Heights; and (3) that both Respondents failed to report expenditures made to a local developer's companies to place campaign signs on corporate property.

## False Campaign Material

Minn. Stat. § 211B.06 prohibits the preparation and dissemination of false campaign material. In order to be found to have violated this section, a person must participate in the preparation or dissemination of false campaign material that the person knows is false or communicates with reckless disregard of whether it is false. On or about October 26, 2004, Respondent Peterson prepared and disseminated a letter to the residents of Columbia Heights. In the letter, Peterson made the following statement:

While my opponent was living out of state during my previous tenure of 14 years as a council member and two terms as Mayor of Columbia Heights, we did not stand still.<sup>[31]</sup>

Peterson concedes that the letter is campaign material. He denies, however, that the statement at issue is false, or that it was made with knowledge that it was false or with reckless disregard for the truth.

The term “reckless disregard” is not defined in the statute. When considering the predecessor to this statute, the Minnesota Court of Appeals, in *State v. Jude*,<sup>[32]</sup> rejected the argument that section 211B.06 could constitutionally create an ordinary or gross negligence standard. At that time, § 211B.06 made it a crime to prepare or disseminate campaign material that a person knows “or has reason to believe is false.” The court found that extending criminal liability to those who have only a “reason to believe” the campaign material is false made the statute unconstitutionally overbroad.

Instead, the court in *Jude* held that a criminal sanction could not be imposed for political speech that does not meet the “actual malice” standard of *New York Times Co. v. Sullivan*.<sup>[33]</sup> That is, the statement must be made with knowledge that it is false or with reckless disregard of whether it is false or not. The court explained further that the phrase “reckless disregard” involved a subjective element of “actual conscious disregard of the risk created by the conduct.” The court pointed out that when a challenged statute regulates “core political speech” it must be examined with exacting scrutiny.<sup>[34]</sup>

Following the *Jude* decision, the Minnesota Legislature amended Minn. Stat. § 211B.06 in 1998 by replacing the “reason to believe” language with the “reckless disregard” language, thereby incorporating the *Sullivan* standard. Thus, it appears that the legislature intended, in accord with *Jude*, to require that the Complainants show by clear and convincing evidence that the statements are false and that Respondent either knew they were false or acted with actual conscious disregard of whether they were false or not, in order to establish a violation of Minn. Stat. § 211B.06.

The Complainants argue that Peterson’s statement is false because it implies that Wyckoff lived out of state for 18 years during Peterson’s tenure as council member *and* mayor, and that she only recently moved into the City. In fact, Wyckoff has resided in Columbia Heights since January of 1993. She served on the City Council from 1999-2000, and served as mayor from 2001-2002. The Complainants contend that Peterson knew the statement in his letter was false or wrote the statement with actual conscious disregard of whether it was false or not. Respondent Peterson maintains that he did not



mean to imply that Wyckoff lived out of state the *entire* 18 years he served as council member and mayor. Instead, he meant to point out that Wyckoff lived out of state for a portion of that time period while he was serving on the City Council.

The statement at issue in Peterson's letter is factually false. Ms. Wyckoff did not live out of state "during Peterson's tenure of 14 years as council member and two terms as Mayor of Columbia Heights." The word "during" is defined to mean "throughout the course or duration of" or "at some time in."<sup>[35]</sup> Ms. Wyckoff did not live out of state throughout the duration of Peterson's service as a council member and mayor. That is, she did not live out of state from January of 1985 through December of 2002. She lived out of state from 1986 to January of 1993. Moreover, even if "during" is interpreted to mean "at some time in," Wyckoff did not live out of state at any point in time during Peterson's mayoral terms (1999-2002). In fact during that time period, Wyckoff served on the City Council along side Peterson. Therefore, the panel finds that the statement in Peterson's letter is false because it states that Wyckoff lived out of state during Peterson's tenure as a council member *and* mayor.

Contrary to Complainants' argument, however, it is not enough to prove that the statement is false in order to establish a violation of section 211B.06. Instead, the Complainants must also show by clear and convincing evidence that Peterson either knew the statement was false or acted with reckless disregard of whether it was false. Peterson stated at the hearing that he was attempting to convey by the sentence that Ms. Wyckoff lived out of state for a period of time while he and the other City Council members were working on behalf of the City. Peterson explained that he had taken issue with comments Wyckoff had made earlier that little had been accomplished in Columbia Heights while she was away. Peterson claims that he was attempting to inform the voters that significant improvements had been made while Wyckoff was living away from Columbia Heights.

Although the sentence at issue is factually false, the Complainants have not shown by clear and convincing evidence that Peterson knew the sentence was false. What is at issue here is a poorly constructed sentence. The question is, did Peterson act with reckless disregard of the statement's falsity? That is, as stated in *Jude*, did he act with "actual conscious disregard of the risk created" by his conduct? Peterson testified that he showed the letter to friends before he mailed it and there is no evidence that either he or his friends entertained serious doubts as to the truth of the statement at issue. The Complainants have a very high burden of proof with respect to this allegation. The panel concludes that the Complainants have failed to show that Peterson acted with reckless disregard of the statement's falsity. Peterson may have acted negligently by indicating that Wyckoff was out of state the entire time he served as a council member and/or mayor, but the evidence is insufficient to support a finding of reckless or actual conscious disregard for the truth or falsity of the statement. This allegation is therefore dismissed.

#### Bribery/Treating Allegation

Minn. Stat. § 211B.13 prohibits the giving of money, food, liquor or other thing of monetary value to a person "in order to induce a voter to refrain from voting or to vote in a particular way" at an election. However, "refreshments of food or nonalcoholic

beverages of nominal value consumed on the premises at a private gathering or public meeting” are not prohibited under this section.

On October 29, 2004, Respondents Williams and Peterson visited with the residents of the Park Villa housing complex as part of a “get to know the candidates” event arranged by Dennis Ecklund, president of Park Villa’s residents’ council. At the event, Williams and Peterson identified themselves as candidates in the up-coming election, described their backgrounds, and answered questions from the residents. Following their presentation, Williams spoke with Ecklund and offered to arrange for the donation of chicken and soft drinks from Jeff’s Bobby and Steve’s Auto World to Park Villa’s potluck dinner the following evening. On October 30, 2004, Jeff’s Bobby and Steve’s Auto World delivered 30 pieces of chicken and 24 cans of soft drinks to Park Villa’s potluck dinner. It was the first time Auto World had donated food to Park Villa.

The Complainants argue that Respondent Williams’ donation of chicken dinners to the residents of Park Villa amounted to bribery or “treating” in violation of Minn. Stat. § 211B.13. Complainants contend that by donating the chicken dinners, Williams gave something of monetary value to the residents in order to induce them to vote for Williams and Peterson in the upcoming election. The Complainants point out that the offer to donate food was made on the evening of the campaign appearance and the food was supplied on the following evening, just three days before the election. In addition, Complainants maintain that the exception for giving refreshments of food or nonalcoholic beverages of nominal value does not apply because the chicken dinners delivered to Park Villa had significant monetary value.

Respondent Williams argues that the Complainants have failed to show that he provided the chicken dinners or that if he did so, it was done in order to induce voters to vote for him. In addition, Williams contends that the Complainants cannot show that the chicken dinners were of greater than nominal value. Williams contends that the entire expenditure for the chicken dinners did not exceed twenty or thirty dollars. According to Williams, this amount is nominal in light of his total campaign expenditures of over \$11,000. In addition, Williams points out that in *Engelbert v. Tuttle*,<sup>[36]</sup> the Minnesota Supreme Court held that the serving of glasses of wine and beer by a candidate to four persons did not violate the Corrupt Practices Act when the dispensing of these drinks amounted to “mere hospitality” and was not done to influence voting. The evidence in that case established that the candidate engaged in no talk about his candidacy for office when he dispensed the beverages.<sup>[37]</sup>

The panel concludes that the Complainants have met their burden of establishing that Williams arranged for the donation of the chicken dinners to Park Villa on October 30, 2004. Ecklund testified that Williams made the offer to provide the dinners on October 29, 2004, following his meeting with the Park Villa residents. Respondent Peterson also testified that he overheard Williams and Ecklund discussing the chicken dinners. At first Williams denied having anything to do with chicken dinner donation but later he testified that he simply did not recall offering to give free food. The panel finds the Complainants did establish by a preponderance of the evidence that Williams arranged for the donation of the chicken dinners to Park Villa. Under the statute, a person who directly *or indirectly* gives a thing of monetary value to a person in order to induce him to vote in a particular way, has violated the prohibition against bribery.

Thus, it is not necessary for Complainants to show that Williams himself delivered the chicken dinners to Park Villa on October 30, 2004. It is sufficient to establish that he arranged for their donation and Complainants have shown this.

It is a question of fact whether a thing given by a candidate is an object of value and violative of the Act.<sup>[38]</sup> Contrary to Respondent Williams' argument, an assessment of the monetary worth of an item should be made from the perspective of a voter receiving the item, not the person offering it.<sup>[39]</sup> According to the testimony of Jeff Bahe, the dinners from Auto World had a retail value of approximately \$76.50. The panel concludes that the dinners' value is more than nominal. Therefore, the exception in section 211B.13 for refreshments of nominal value given at public meetings and private gatherings does not apply.

Finally, the panel concludes that the Complainants have shown by a preponderance of the evidence that Williams provided the dinners to induce voters to vote for him. The panel finds significant the fact that Williams offered to donate the meals on the evening of his campaign appearance at Park Villa. The food was delivered the following evening, just three days before the election. In addition, Jeff's Bobby and Steve's Auto World had never donated meals to Park Villa before October 30, 2004. The panel concludes that the Complainants have shown that Williams gave food of monetary value to the residents of Park Villa in order to induce them to vote for him in the upcoming election. By doing this, Respondent Williams violated Minn. Stat. § 211B.13.

Having found that the Respondent Williams violated Minn. Stat. § 211B.13, the panel may make one of several dispositions.<sup>[40]</sup> The panel may issue a reprimand, may impose a civil penalty of up to \$5,000, and may refer the complaint to the appropriate county attorney for criminal prosecution. The panel concludes that Respondent William's conduct was a deliberate and clear violation of the statute. In addition, given that it took place on the Saturday before the election, Complainants had little time to address the situation. Finally, it is possible to conclude from the record that the donated dinners had some impact on voters. The testimony established that approximately 25 to 30 people attended the Park Villa potluck dinner. Based on all of these factors, the panel concludes that a penalty of \$1500 is appropriate for this violation.

### Illegal Expenditures

Complainants have also alleged that Williams' donation of chicken dinners was an illegal expenditure in violation of Minn. Stat. § 211B.12. This section prohibits the "use of money collected for political purposes" for things other than permitted legal expenditures, such as advertising, printing, mailing and office space. Complainants, however, failed to put forward any evidence to support their allegation that Williams "used money collected for political purposes" to cover the cost of the donated chicken dinners. This allegation is therefore dismissed.

### Financial Reporting

Both Respondents Peterson and Williams admitted that they failed to list on their campaign financial report the money they paid to Bruce Nedegaard for allowing them to place their campaign signs on his corporate properties. Once Respondents realized

their mistake, both filed amended financial reports listing the expenditures. Because they failed to report these expenditures in a timely manner, Respondents violated Minn. Stat. § 211A.02. The panel, however, concludes that these violations were unintentional and not deliberate attempts to circumvent the law. In addition, Respondents promptly corrected their reporting forms once the oversights were pointed out to them. For these violations, the panel finds a civil penalty in the amount of \$100 each is appropriate.

**R.C.L. B.H.J. G.A.B.**

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<sup>[1]</sup> Testimony of Julianne Wyckoff.

<sup>[2]</sup> Testimony of Julianne Wyckoff.

<sup>[3]</sup> Testimony of Julianne Wyckoff.

<sup>[4]</sup> Testimony of Julianne Wyckoff; Ex. 7.

<sup>[5]</sup> Testimony of Peterson.

<sup>[6]</sup> Testimony of Peterson.

<sup>[7]</sup> Testimony of Dorothy Wyckoff.

<sup>[8]</sup> Testimony of Julianne Wyckoff and Dorothy Wyckoff.

<sup>[9]</sup> Testimony of Dorothy Wyckoff; Ex. 8.

<sup>[10]</sup> Testimony of Julianne Wyckoff; Exs. 8 and 10.

<sup>[11]</sup> Testimony of Julianne Wyckoff.

<sup>[12]</sup> Testimony of Ecklund.

<sup>[13]</sup> Testimony of Ecklund.

<sup>[14]</sup> Testimony of Ecklund.

<sup>[15]</sup> Testimony of Bahe.

<sup>[16]</sup> Testimony of Ecklund, Peterson.

<sup>[17]</sup> Testimony of Ecklund.

<sup>[18]</sup> Testimony of Bahe.

<sup>[19]</sup> Testimony of Bahe.

<sup>[20]</sup>  $24 \times \$2.65 = \$63.60$ ;  $6 \times \$2.15 = \$12.90$ .

<sup>[21]</sup> The complaints in this matter were filed on January 20, 2005.

<sup>[22]</sup> Testimony of Ecklund, Bahe, and Williams.

<sup>[23]</sup> Testimony of Ecklund.

<sup>[24]</sup> Testimony of Nedegaard, Wyckoff; Ex. 2.

<sup>[25]</sup> Testimony of Peterson and Williams; See, Minn. Stat. § 211B.15, subd. 2.

<sup>[26]</sup> Testimony of Peterson and Williams; Exs. 3 and 4.

<sup>[27]</sup> Testimony of Peterson and Williams; Exs. 5 and 11.

<sup>[28]</sup> Minn. Stat. § 211B.32, subd. 4.

<sup>[29]</sup> Minn. Stat. § 211B.32, subd. 4.

<sup>[30]</sup> Respondents' checks should be made payable to "Treasurer, State of Minnesota", and sent to the Office of Administrative Hearings, 100 Washington Avenue South, Suite 1700, Minneapolis, MN 55401.

<sup>[31]</sup> Ex. 7.

<sup>[32]</sup> 554 N.W.2d 750 (Minn. App. 1996).

<sup>[33]</sup> 376 U.S. 254, 279-80, 84 S.Ct. 710, 726, 11 L.Ed.2d 686 (1964).

<sup>[34]</sup> 554 N.W.2d at 754, *citing*, McIntyre v. Ohio Elections Comm'n, 514 U.S. 334, 347, 115 S.Ct. 1511, 1519, 131 L.Ed.2d 426 (1995).

<sup>[35]</sup> American Heritage College Dictionary, 427 (3<sup>rd</sup> ed. 1997).

<sup>[36]</sup> 185 Minn. 608, 242 N.W. 425 (Minn. 1932).

<sup>[37]</sup> *Id.* at 609.

<sup>[38]</sup> See, Op. Atty. Gen. 627 F-1, March 7, 1950.

<sup>[39]</sup> *Cf. United States v. Garcia*, 719 F.2d 99, 102 (5<sup>th</sup> Cir. 1983) (discussing 42 USC § 1973i(c)'s prohibition against paying for votes).

<sup>[40]</sup> Minn. Stat. § 211B.35, subd. 2.